9110-04-P

### DEPARTMENT OF HOMELAND SECURITY

**Coast Guard** 

**33 CFR Part 165** 

[Docket Number USCG-2019-0898]

RIN 1625-AA00

Safety Zone; Sunken Vessel Salvage; Port Sutton Channel; Tampa, Florida

**AGENCY**: Coast Guard, DHS.

**ACTION**: Temporary final rule.

**SUMMARY**: The Coast Guard is establishing a temporary safety zone for navigable waters within a 150-foot radius of a sunken vessel, in Port Sutton Channel in Tampa, FL. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the sunken vessel and its salvage. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port St. Petersburg.

**DATES**: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 1, 2019. For the purposes of enforcement, actual notice will be used from November 12, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES**: To view documents mentioned in this preamble as being available in the docket, go to https://www.regulations.gov, type USCG-2019-0898 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

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**FOR FURTHER INFORMATION CONTACT**: If you have questions on this rule, call or email Marine Science Technician First Class Michael Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228-2191, e-mail Michael.D.Shackleford@uscg.mil.

#### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

# II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to provide for the safety of vessel traffic in the port and to provide a safe work area around the vessel that sunk on November 11, 2019. There is insufficient time to publish a NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the incident.

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## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the sunken vessel in Port Sutton Channel, Florida will be a safety concern for anyone within a 150 foot-radius of the sunken vessel. This rule is needed to protect personnel and vessels in the navigable waters within the safety zone while the vessel remains sunk.

### IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. on November 12, 2019 through 9 a.m. on December 1, 2019. The safety zone will cover all navigable waters within a 150-foot radius of a sunken vessel in Port Sutton Channel. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the sunken vessel is salvaged. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) the safety zone will be enforced for 20 days; (2) although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide notification of the safety zone to the local maritime community by a Broadcast Notice to Mariners.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person

listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

## C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or

Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

## E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 20 days that will prohibit entry within a 150-foot radius of a sunken vessel in Port Sutton Channel. It is categorically excluded from further review under paragraph L60(d) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority**: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0898 to read as follows:

# § 165.T07-0898 Safety Zone; Sunken Vessel; Port Sutton Channel, Tampa, FL.

- (a) <u>Regulated area</u>. The following area is established as a safety zone. All waters of Port Sutton Channel within a 150-foot radius of a sunken vessel located at 27°54'14" N, 082°24'57" W, in Tampa, FL.
- (b) <u>Definition</u>. The term "designated representative" means Coast Guard Patrol
  Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast
  Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the
  Port St. Petersburg in the enforcement of the regulated areas.
- (c) <u>Regulations</u>. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area

as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or

remain within the regulated areas by contacting the Captain of the Port St. Petersburg by

telephone at (727) 824-7506, or a designated representative via VHF radio on channel 16.

If authorization is granted by the Captain of the Port St. Petersburg or a designated representative,

all persons and vessels receiving such authorization must comply with the instructions of the

Captain of the Port St. Petersburg or a designated representative.

(d) Enforcement period. This section will be enforced daily from 5 p.m. on November

12, 2019 through 9 a.m. on December 1, 2019.

Dated: November 12, 2019.

Matthew A. Thompson,

Captain, U.S. Coast Guard,

Captain of the Port St. Petersburg.

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